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Sixteenth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 May 1997, at 10 a.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 10.10 a.m.

GENERAL DISCUSSION: "THE REVISION OF THE COMMITTEE'S REVISED GENERAL GUIDELINES REGARDING THE FORM AND CONTENT OF THE REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT" (agenda item 8) (E/CN.4/1996/105; E/C.12/1991/1)

1. Mrs. BONOAN-DANDAN (Rapporteur) said that she wished to refer to the expert group meeting on the development of guidelines for the integration of gender perspectives into human rights activities and programmes (E/CN.4/1996/105), whose recommendations had been endorsed by the chairpersons of the human rights treaty bodies. The experts had recommended, in particular, that in undertaking investigative procedures, every effort should be made to ensure that information specifically pertaining to the human rights of women was obtained (para. 40 (d)), that all documents pertaining to the treaty bodies' work should use gender-neutral language wherever possible (para. 40 (e)) and that preparation for the consideration of reports of States parties should include collection and gender analysis of data from United Nations agencies and non-governmental organizations (para. 41 (a)).

2. Other recommendations concerning the Committee's guidelines had been made during a workshop organized by the American Association for the Advancement of Science (AAAS) (document without symbol, in English only, distributed during the meeting). The participants had pointed out that the information requested by the Committee was hard to come by, even in the most developed countries. They had suggested that the Committee should draft a general comment on gender, as discrimination hampered women's enjoyment of all the rights set forth in the Covenant. A number of recommendations had also been made following the round table on reproductive health organized by the United Nations Population Fund (UNFPA). It had been suggested, inter alia, that the treaty bodies should pay more attention to women's issues, particularly health issues, in their guidelines and concluding observations.

3. In her view it would be advisable for the Committee to take into account in its guidelines, not only the status of women, but also that of disabled persons and the elderly. Nevertheless, the Committee should refrain from requesting even more information from States parties, as they were already discouraged by the volume of information they had to provide. Accordingly, she suggested totally abandoning the existing reporting guidelines and focusing on the implementation of the articles of the Covenant in respect of a number of key issues. That would entail an additional burden of work for the Centre for Human Rights, which would have to collect more data and to conduct more searching analyses, and for the country rapporteurs, who would have to conduct more extensive research themselves.

4. Mrs. JIMENEZ BUTRAGUEÑO, introducing the draft amendments to the Committee's guidelines, with the preparation of which she had been entrusted, said that she had drafted a new section (comprising six paragraphs) on article 3 of the Covenant, which had not previously been mentioned in the guidelines (E/C.12/1991/1). Throughout the text, she had emphasized the right to freedom from discrimination on grounds of sex or age. It would be preferable for paragraph 4 of the section, concerning violence against women, to appear under article 10, which concerned ill-treatment.

5. She had also changed the order of some paragraphs. She had placed the first paragraph of each section, reading "if your State is a party to any of the following Conventions ... and has already submitted reports to the supervisory committee(s) concerned ... you may wish to refer to the respective parts of those reports ...", at the end of the relevant sections. In her view, countries would thus be more willing to provide the information requested and would not merely refer to the reports sent to other United Nations bodies and specialized agencies.

6. Lastly, she suggested adding two new sections to the Committee's guidelines, one entitled "General legal framework within which human rights are protected" and the other "Information and publicity on the rights recognized in the Covenant". She thought that the Committee's work would be facilitated if such information were available.

7. The CHAIRPERSON pointed out that during the current session it had been difficult for the members of the Committee to obtain specific information from representatives, who had confined themselves to providing general replies to questions that were themselves general, albeit relevant. In the interests of a more fruitful dialogue that would enable the Committee to make precise concluding observations, he suggested that the current guidelines should be retained only for the preparation of initial reports. Where periodic reports were concerned, it would be preferable to focus on a narrow set of issues that would be chosen by the members of the Committee in the light of the situation in the country concerned. He suggested drawing up a list of issues, divided into two parts: the first would deal with four major issues, in turn subdivided into sub-issues; the second part would concern more general points on which a written report would not be necessary, but on which the members of the Committee would be able to ask specific questions. The Committee would also retain the possibility to ask other questions, especially in order to take developments in the situation into account. The Government concerned would thus be requested to submit a detailed report of 50 or 60 pages bearing only on the four major issues raised. The Government would know who should be appointed to the delegation sent to Geneva for the consideration of the report. In addition, NGOs, the press and other interested parties in the country concerned would thus be informed in advance of the issues addressed, which might draw their attention.

8. In practice, the timetable for the proposed new procedure would be the following: in May 1997, for example, the Committee would send to all interested parties, including NGOs, a note requesting them to provide information on any problems they had identified in the country concerned; the Committee would then request the secretariat to prepare an exhaustive and carefully focused background document; in December 1997 the Working Group would meet and, on the basis of those documents, prepare a two-part list of issues (issues of priority and issues of a general nature), which would immediately be sent to the Government concerned and to the other parties; the Government would be requested to prepare a report for May 1998; once it had been translated and reproduced, the report would be submitted to the Committee in December 1998.

9. Such a procedure had many advantages. It only lasted 18 months, and the report would only be six months old when the Committee considered it. In

contrast with the current procedure, the preparation of a concise and carefully focused document did not require consultations with numerous ministries. The Committee would be able to prepare highly pertinent concluding observations based on a more refined analysis of detailed information on a limited number of issues. Such a finely focused approach would compel the Committee to consider issues more rationally.

10. Mr. MARCHAN ROMERO, emphasizing the need for the Committee constantly to re-examine itself and continually to review its methods of work, said that what counted most was identifying means of improving the work of the pre-sessional Working Group. That Group should not only formulate precise questions but also indicate to countries the issues and subjects of concern the Committee wished to address with their representatives through a constructive dialogue. That approach would make it possible for countries to send to the Committee's session a delegation composed of the appropriate experts.

11. Mr. TEXIER said that after 10 years' existence the time had come for the Committee to assess the progress it had made and to show the way forward. His own assessment was a mixed one: while the Committee had progressed in some spheres (the establishment of a working group, the sharing of work, the possibility of considering the situation in a country even in its absence, etc.), it had barely progressed in terms of a deeper understanding of the Covenant and of the obligations deriving from it. The right to housing had alone been developed to some extent, while no progress had been made in respect of articles 6 to 9, the right to health, etc.

12. Regarding the consideration of reports, he shared the views of the Chairperson on the need to retain the guidelines for initial reports and to amend those relating to periodic reports. Where the Working Group was concerned, he criticized its practice of asking all States the same questions. Since each country faced specific problems, the questionnaires should be individualized and the dialogue should hinge on a limited number of those specific problems.

13. In view of the large number of States parties to the Covenant (135) it would be desirable to request some members of the Committee to concern themselves more deeply with a particular country, so that more precise and selective information could be obtained. When reports were considered in public meetings, the members of the Committee should try to avoid making the same mistakes for which they criticized delegations, and rather than asking trivial and general questions, they should ask searching questions that called for thorough replies. To that end, the Committee should apply itself to the task of developing detailed comments on the Covenant. In that connection, he was prepared to deal with the question of the enforceability of rights before the courts.

14. It was important to perform that task in order, especially, to overcome the misgivings to which, for example, the draft optional protocol recently presented by the Committee to the Commission on Human Rights had given rise. It was necessary to demonstrate that there was no difference, in terms of enforceability, between civil and political rights on the one hand and economic, social and cultural rights on the other. The Committee should

prepare a general comment on that particular issue, as well as on others, taking into account the conclusions of the most recent major conferences (Beijing, Copenhagen, Rome, etc.). In his view, despite official rhetoric, economic, social and cultural rights were not treated on the same footing as civil and political rights. He stressed the need for the Committee to be able to avail itself of the services of an expert from the Centre for Human Rights. It was deplorable, and detrimental to the Committee, that none of the Centre's experts specialized in economic, social and cultural rights.

15. The CHAIRPERSON said that in its plan of action the Committee advocated the establishment of a secretariat with a staff of three to assist it in its work and requested an amount of US$ 500,000 per annum for an initial three-year period. In comparison, the Committee on the Rights of the Child had obtained more than twice that amount and already had a secretariat with a staff of five.

16. Mr. SA'DI said that while he endorsed the proposals made by the Chairperson and Mr. Texier, he wished to make a number of remarks. The first of them concerned the occasionally polemical nature of the discussions between the Committee and country representatives. The Committee certainly had every reason to deplore the inadequacy of the replies provided, but forcing delegations into a tight corner might be detrimental to the spirit of cooperation which should mark the Committee's work.

17. Secondly, in contrast with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights was characterized by ideals and principles rather than by precise objectives. That was perhaps one reason for the lack of detail in the replies provided by countries. As Mr. Texier had suggested, the Committee should press ahead with the development of general comments, in order to foster a more purposeful dialogue. The Committee could, like the Human Rights Committee, on each occasion request a working group to refine its comments, even if that meant having two working groups. If the financial situation prevented that, the existing working group would be requested to prepare draft general comments for the Committee to adopt at its plenary session.

18. His third remark concerned cultural rights, which were in his view neglected in the Committee's work. It was true that economic rights were very important on account of their snowball effect on other rights, but the Committee should be careful not to neglect the cultural aspect of the Covenant.

19. Mrs. JIMENEZ BUTRAGUEÑO said that as a whole she shared the views of the previous speakers and emphasized the need to update the general guidelines, by adding two sections, the first on the general legal framework within which human rights were protected and the second on the rights recognized under the Covenant and relations between the Government and NGOs. In addition, the Committee should mark its interest in gender equality and the situation of the elderly.

20. Where the pre-sessional Working Group was concerned, the Committee should not confine itself to requesting the secretariat to prepare documents; it could also invite the members of the Committee to do so. She herself was

prepared to deal with the right to work. The Group would then be able to refer to several basic documents and the additional burden of work would be offset by the improvement in quality.

21. Lastly, she stressed the importance of NGOs as sources of information and the need for the Committee, in its relations with countries, to avoid confrontation and to adopt a velvet glove approach. Firmness and courtesy were not incompatible.

22. The CHAIRPERSON pointed out that the occasionally polemical nature of the discussions was attributable to the disappointment caused by the inadequacy of the replies. The adoption of a more purposeful approach and of more detailed rules should remedy the problem.

23. Mr. GRISSA said that the Committee's methods of work had placed it in a difficult situation. There were notable differences between the 135 States parties to the Covenant in several respects: their constitution and political structure, their history, the religious, ethnic and linguistic composition of the population, level of economic and social development, the importance of the NGOs working there and the quality of the relevant information available to the Committee. However, neither the Covenant nor the general guidelines took those differences into account.

24. Regarding the reports, which were the very foundation of the questions asked by the Committee, it seemed absurd to deal with Sweden, Bangladesh and Burkina Faso, for example, in the same way. It would be preferable for the initial report to contain general information and for the subsequent reports to describe developments in respect of problems raised during the discussion on the initial report. It was imperative to treat different countries in different ways.

25. Mr. RIEDEL said that he fully endorsed the suggestions made by the Chairperson regarding the Committee's methods of work. Nevertheless, he believed that its methods could be further improved by ensuring that all documents were translated to prevent delegations from circumventing the questions (as the Russian Federation had done), and by asking more precise questions (previously classified into categories A or B). In other words, a more finely-tuned approach should be adopted so as to institute a genuine dialogue between the Committee and the delegation concerned. Furthermore, part of the Committee's plenary sessions could be devoted to the consideration of the questions proposed by the pre-sessional Working Group, before submitting the list of issues to the Government. To that end, he suggested, assuming that the pre-sessional Working Group adopted the approach proposed by the Chairperson (questions A and B) and that it sent the list of questions to the members of the Committee in their own countries or handed it to them at the very beginning of the session, that the Committee should devote half a day to considering those questions. He added that it would be preferable, at the beginning of a session, for the members of the Committee to have before them not only the five reports to be considered during the session, but also the 10 others to be considered during the next two sessions, so that they could make full use of the time available to them between sessions to study the reports. In his view, in its draft general comment, the Committee should make perfectly clear to the State party the distinction it made between

self-executing rights and non-self-executing rights. In addition, he thought that the Committee spent too much time considering issues relating to the first articles of the Covenant - to the detriment of issues relating to cultural rights - and that it might be preferable to focus more attention on cultural issues when countries presented their second or third periodic report.

26. Mr. WIMER said that he would like to know the opinion of the Chairperson and of the secretariat regarding the number of reports the Committee was capable of considering each year; in his view, in order to reach worthwhile conclusions on its methods of work, the Committee should direct its attention to the quantitative rather than the qualitative aspect of its work.

27. The CHAIRPERSON said that he would take up the matter later. He invited the representative of the International Federation of University Women to address the Committee.

28. Mrs. PONCINI (International Federation of University Women) said that in reviewing the Committee's general guidelines it would be desirable to take into account the evolution in women's rights within the United Nations system since 1990. Regarding economic rights and the rights of women in the labour sphere especially, she drew attention to the need to revise the whole concept of work as defined in the Covenant and in the 1990 guidelines in order to take account of the changes in the world economy. She drew attention to the following issues: the importance of recognizing the value of unpaid work as a contribution to economic development; the concept of equal partnership between women and men in the sharing of the unpaid family responsibilities at home and paid work in the workplace (in that respect, the ratification of ILO Convention No. 156 should be encouraged in the new guidelines); the increase in the number of women entering the peripheral labour market (part-time work, clandestine work by migrant women, etc.), in respect of which the new guidelines should encourage ratification of the 1994 ILO Convention on part-time work, of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and of the ILO conventions and resolutions on migrant workers; the growth in the informal sector (home work, small businesses, etc.), in which women were a majority and which required the adoption of laws to protect their economic rights (the new guidelines should also encourage ratification of the 1996 ILO Convention concerning Home Work), and the need to prepare gender-disaggregated data and to improve women's access to higher education in order to broaden their professional horizons. To conclude, she urged the Committee to consider allowing NGOs to address the Committee when reports by States parties were considered.

29. Mr. ADEKUOYE pointed out that when country reports were considered two or three years late, the figures they contained were no longer up-to-date and said that in his view means of updating them should be examined. He also pointed out that as the documents to be considered were sometimes received at the last minute, the members of the Committee only became acquainted with them during the exchange of opinions with the delegations and were unable, in the circumstances, to ask precise questions. Accordingly, he suggested that the secretariat should be given assistance to ensure that reports were sent sufficiently in advance for the members of the Committee to be able to study

them in depth and to ask extremely pointed questions. He had also noticed that when second periodic reports were considered, the concluding observations made when the previous report had been considered were not necessarily taken into account. If the Committee wished to achieve better results, its members should endeavour to take up the issues identified previously in order properly to follow them up. He also regretted that when the initial reports of States parties were considered, the members of the Committee failed to pay more attention to the economic situation in the developing countries, even though those countries' capacity to meet their social and cultural commitments depended on their economic situation. In his view the Committee should show its awareness of the difficulties encountered by the developing countries and reflect that awareness in its questions.

30. Mr. CEAUSU said that in his view the reports submitted by States parties to the Covenant were for the most part too long, repetitive or even contradictory, emphasized legislation without giving any details of its implementation, attached excessive importance to future projects that were not always adopted or referred to other reports submitted to other United Nations bodies. For those reasons it was important to revise the general guidelines and in particular to reduce the long list of questions, as in most cases States parties disregarded them. States parties should be compelled to focus on the essential facts needed to understand the implementation of economic, social and cultural rights in the country. The Committee or Working Group should prepare a shorter list of issues, except for the initial report.

31. Moreover, consideration of country reports should be planned two years in advance, but to do so the pre-sessional Working Group should be provided with information on the situation in the countries concerned. The necessary documentation should be compiled by the secretariat, or alternatively NGOs should be invited to submit written documents to the Committee or to make oral presentations on the situation in those countries.

32. Another difficulty to which the reform would give rise concerned the periodicity of reports, which would be 6, 8 or even 10 years. During the interim period, the composition of the Committee would have changed. The new members would not have the reports which the Committee had considered five years earlier. The situation in the countries concerned would have changed in 5 or 10 years. In those circumstances, it did not seem possible to prepare a report on specific issues. The reports submitted should be comprehensive so that the members of the Committee could acquire a general idea of the situation in the country. The Committee could not confine itself to considering new developments since the consideration of the country's previous report 5 or 10 years previously.

33. In the interests of efficiency, the Committee's work should be better organized. Firstly, the order in which reports were considered should be planned so as to consider the reports of countries whose presence at the Committee table was uncertain at the end of the session. He also suggested that it might be unwise for the Committee to plan to consider the reports of only four or five countries. It would be advisable to plan to consider six or seven reports per session, even if that meant deferring consideration of one or two of them before the session began, when the Committee was certain that the other countries concerned would be represented.

34. Regarding the replies to the additional questions, which were generally provided in only one language, the delegation should state those replies before the Committee and not assume that the members were already informed of them. The country rapporteurs should also play a more active role and ensure that the replies met with the Committee's expectations. Finally, to avoid repeating questions that had already been answered in the report, the report should be read attentively.

35. It had been suggested that two or three members of the Committee should specialize in the consideration of a particular country's report. He would prefer the solution proposed by Mrs. Jimenez Butragueño, whereby one or several members of the Committee would specialize in one or several articles of the Covenant. They would then, if necessary, ask additional questions.

36. He shared Mr. Sa'di's opinion that confrontation with delegations should be avoided in the interest of dialogue. Occasionally, however, when the delegation avoided replying to questions or failed to address the issues, the quest for dialogue became a difficult art. The attitude of the members of the Committee depended on the delegation's attitude, on its willingness to cooperate with the Committee and on the content of the report, which might call for additional questions if it did not observe the guidelines. The Chairperson also had an essential role to play: when he saw that a delegation was avoiding replying to questions put by members of the Committee, he should intervene to stop it.

37. Mr. RIEDEL pointed out that the attention of the authors of reports should perhaps be drawn to the fact that they were often too long and contained some repetitions. Moreover, if the Committee maintained its current procedure, the idea of planning to consider the reports of six or seven countries was an excellent one.

38. Mr. KOUZNETSOV suggested that the Committee should consider the kind of questions delegations were asked. Some of them were completely new or so precise that even experts would be unable to answer them unprepared. In addition, when the Committee had information that was not available to the delegation or which the latter disputed, it was impossible to tell the delegation that the information, which came from identified sources, was accurate and that the delegation's was not. In its concluding observations, the Committee might consider drawing attention to major discrepancies between the information provided by the delegation and that from other sources. Furthermore, information on the legislation adopted by a Government could prove extremely useful in the case of a country that was undergoing changes. It provided an indication of the country's economic and social priorities.

39. It might also be extremely useful for the Committee to receive the most recent reports submitted to other bodies by a country whose report was being considered. Although the general information was the same, the specific information might provide an additional input. For example, reading the reports submitted to the Committee on the Rights of the Child might enlighten the members of the Committee on the situation of economic and social rights in the country in question.

40. The CHAIRPERSON pointed out to the members of the Committee that the country reports which had been considered by other bodies, in particular treaty bodies, the discussion that had taken place with the country and the concluding observations of those other bodies were contained in the file available to them during the session.

41. Mrs. JIMENEZ BUTRAGUEÑO suggested that in order further to rationalize the Committee's work the time spent on the introduction of reports should be limited, as was the practice in other treaty bodies, and secondly the members of the Committee should specialize. As Mr. Ceausu had emphasized, it was important to ascertain how the Committee's concluding observations and recommendations were followed up. Accordingly, she suggested that the question should be included in a paragraph of the general guidelines. The question whether there had been any substantial changes in legislation since the report had been prepared should also be asked.

42. Mrs. BONOAN-DANDAN urged that the members of the Committee should act in a more disciplined manner in order for all the articles dealt with in the reports, up to and including article 15, to be considered in a balanced way. The list of issues would be more complete if, contrary to current practice, the pre-sessional Working Group was provided not only with the report under consideration but also with the country analysis and the information provided by NGOs and the treaty bodies. At present it only received that information during the plenary meeting of the Committee, which was why the representatives of the State party concerned were asked totally new questions. It was imperative to solve that problem.

43. The CHAIRPERSON invited the representative of the American Association of Jurists to address the Committee in the general debate.

44. Mr. TEITELBAUM (American Association of Jurists) said that the role of the Committee and of NGOs was not merely, in the case of the former, to ensure that countries carried out their commitments under the Covenant and, in the case of the latter, to transmit relevant information. They were also responsible for suggesting a change of tack when the policy in question hindered the implementation of the Covenant. Accordingly, the Committee should first of all acquaint itself with the situation in the country, including the situation regarding the implementation of article 1 of the Covenant, on self-determination, which concerned both States and peoples within States. He suggested that the following questions could be asked: What was the procedure for taking decisions in the economic, financial, social and cultural spheres? Was Parliament involved? Were grass-roots organizations such as an economic and social council consulted? What were the consultation and decision-making mechanisms involved when public services, State enterprises and natural resources were privatized?

45. States should also refer to trends in the services provided by the privatized public services and the rates charged. States should also provide information on the extent to which transnational corporations established in the country complied with its labour legislation (wages, working hours, the

employment of children and adolescents) and with the ILO conventions to which the country was a party, whether they were entitled to any privileges in that area and whether they complied with environmental protection standards. States should also indicate whether such enterprises enjoyed tax or customs privileges that did not extend to national firms.

46. Another set of questions could concern the proportion of GDP spent on health, education, social security and debt servicing. The Committee's guidelines could be appropriately amended so as to take into account economic globalization and the internationalization of decision-making mechanisms, and their impact on the implementation of the rights set forth in the Covenant. The phenomenon of the concentration of wealth in the hands of a few, which made the concept of "resources available" somewhat ambiguous, should also be taken into account. The Committee should ascertain whether the concept applied to the colossal wealth of private individuals or small groups in countries where the majority of the population not only lived in poverty but made additional sacrifices to enable the State to meet its international commitments.

47. The American Association of Jurists believed that the revised guidelines should include questions on wealth distribution, and in particular on the share of the different sectors in the national product (small farmers, industrialists, persons of private means, etc.), trends over the previous decade and the existence or absence of an income redistribution policy.

48. Needless to say, when the guidelines were revised, the various major conferences organized by the United Nations (Vienna, Copenhagen, Beijing, etc.) and the concept of the indivisibility of the various rights, such as the rights of the child, should be taken into account.

The meeting rose at 1 p.m.